Canada Industrial Relations Board Conseil canadien des relations industrielles

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Reasons for Decision

Syndicat des employé(e)s de TVA, Local 687, CUPE; Réjean Beaudet,

applicants,

and

TVA Group Inc.,

respondent.

Board Files: 29244-C, 29245-C
Neutral Citation: 2012 CIRB **628**
February 17, 2012

A panel of the Canada Industrial Relations Board (the Board), composed of Ms. Louise Fecteau, Vice-Chairperson, and Messrs. Daniel Charbonneau and André Lecavalier, Members, was assigned to consider these matters. A hearing was held in Montréal on February 15, 2012, and both parties filed affidavits. No witnesses were called at the hearing.

Appearances

Mr. Yves Morin, for the applicants;

Mr. Hubert Graton and Ms. France Legault, for the respondent.

These reasons for decision were written by Ms. Louise Fecteau, Vice-Chairperson.

I–Nature of the Application

[1] This matter involves an application for an interim order filed on January 31, 2012, by the Syndicat des employé(e)s de TVA, Local 687, CUPE (the union), pursuant to section 19.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) (file no. 29244-C) in connection with a complaint of unfair labour practice filed pursuant to sections 94(1)(*a*), 94(3)(*a*)(i) and (*e*), 96 and 97 of the *Code* (file no. 29245-C). The union filed an affidavit for purposes of the application for an interim order.

II–Background

[2] This application for an interim order was filed by the union following the January 30, 2012, decision by TVA Group Inc. (the employer or TVA) to suspend Mr. Réjean Beaudet, an employee of TVA, for a period of three months. The suspension was in connection with the duties that Mr. Beaudet had been performing as union president. The letter of suspension, which was signed by the vice-president of human resources, and addressed to Mr. Beaudet in his capacity as union president, read as follows:

> SUBJECT: Disciplinary action
>
> Dear Mr. Beaudet:
>
> This is in reference to the circumstances surrounding the case of Ms.[F] and your recent action in that respect and, without limiting the generality of the foregoing, your decision in your capacity as union president to launch a public campaign on January 11, 2012, in particular by issuing a press release.
>
> At a meeting held with human resources management and you last January 16, we attempted to obtain your side of the story in this whole matter, but you refused to provide any explanation whatsoever.
>
> We consider that, through your actions, you organized and led a major challenge in the public forum, issuing press releases and taking part in a number of interviews in other media. In our view, such action was not warranted by any urgent circumstances but, rather, was designed primarily to cause irreparable damage to TVA.
>
> In your public campaign, you made a number of untruthful and unverified claims about the case of Ms.[F] while also spreading unjustifiable allegations of racism against your employer. Additionally, without first conducting a thorough investigation, you attacked the credibility of the news service, referring to collective errors.
>
> Your attitude was all the more inexcusable in that you launched this public campaign after the employer had proposed to the union that a meeting be held to discuss the case of Ms. [F] on the very next day, January 12, 2012, and the grievance procedure had not even been initiated.

> In our view, the fact of assuming the duties of union president does not give a person the right to intentionally and illegally damage the reputation of the employer on the public stage.
>
> On the basis of the foregoing, we consider that your actions were completely unacceptable and beyond the normal and reasonable bounds of union business and so constituted a serious infraction necessitating disciplinary action.
>
> Consequently, please be advised that you are being suspended without pay for a period of three months starting immediately and ending on April 30, 2012, to make you realize that this situation is very serious and that any further action of this nature will have severe consequences.
>
> Given that you will not be able to conduct union business with the TVA Group while suspended, we ask that you promptly provide us with the name of the person who will be replacing you as union president during your suspension.
>
> (translation)

[3] This matter essentially relates to a press release issued to the media at large by the union president, Mr. Beaudet, on January 11, 2012. The press release was the result of controversy triggered by an on-air gaffe by a TVA news anchor in December 2011 when pronouncing the name of the recently deceased leader of North Korea. The press release was meant to be a call for the news anchor's return to the airwaves and, among other things, indicated that "these events are part of TVA News's chronic incapacity to give a fair share of its airtime to journalists from visible or cultural minorities" (translation).

[4] According to the employer, what the union president said in the press release was unacceptable and far beyond the reasonable bounds of union business. In fact, on January 30, 2012, the employer filed an employer's grievance, alleging an unfair practice by the union and making a $10,000 claim for damage to its reputation and a $50,000 claim for punitive damages.

[5] Mr. Beaudet has been union president since 2009. Under the collective agreement between the parties, he has been granted a leave of absence without pay for his entire term of office in order to fulfill the obligations and responsibilities that are inherent to his role. According to the collective agreement, upon completing his term of office as president, the employee will be reinstated in his position and he will retain the rights, benefits and privileges provided for in the collective agreement as though he never took a leave of absence. During his leave of absence to fill the position of union president, he is deemed to be working.

III–Positions of the Parties

A–The Union (for the Applicants)

1–The Order Sought

[6] Through its application for an interim order (file no. 29244-C), the union is seeking the following from the Board:

- an order that the employer recognize Mr. Réjean Beaudet on an interim basis as a union representative and, more specifically, union president;

- an order that the employer allow Mr. Réjean Beaudet entry, on an interim basis, to TVA facilities so that he may attend to business in his capacity as union president.

[7] Of note is that, in regard to the merits of the complaint of unfair practice (file no. 29245-C), the union is also seeking a declaration by the Board that the employer breached the *Code* by using unfair labour practices and, subsidiarily, an order by the Board for expedited arbitration. At the hearing of February 15, 2012, the union indicated that it would nonetheless be prepared to have the issue of the merits of Mr. Beaudet's suspension referred to a grievance arbitrator.

2–Issues Raised by the Union

[8] The union deems it imperative that the Board intervene on an emergency basis to issue an interim order to have the employer recognize Mr. Beaudet as a union representative and allow him entry to the TVA's facilities so that he may fulfill his obligations. In its view, the employer's action is detrimental to its proper administration and to its representation obligations and is undermining its credibility with its members. It submits that the action taken by the employer negates the union's representation and raises doubts as to the freedom of expression and association provided for under the charters and recognized by the courts.

[9] Referring to the letter of suspension sent by the employer on January 30, 2012, counsel for the union submits that the mere fact of asking Mr. Beaudet to suggest someone to replace him as union president during his three-month suspension is interference in union matters and contrary to the objectives of the *Code* and its preamble. He adds that, by preventing the president, Mr. Beaudet, from exercising his union prerogatives, the employer is striking out against the entire union. He moreover considers that this allows the employer to control the union as it pleases, contrary to the objectives of the *Code* and its fundamental principles, including that of freedom of association.

[10] Counsel for the union filed a non-exhaustive list of labour relations matters involving Mr. Beaudet, which the employer did not challenge. That list shows among other things that Mr. Beaudet is also president of the union representing the advertising representative bargaining unit, which is currently in negotiations for the renewal of its collective agreement. The list also sets out a whole range of union business items, from matters involving technological changes, to union applications to the Board pursuant to section 18 of the *Code*. Counsel for the union indicates that at this point the union is not seeking Board intervention in regard to the merits of the matter, that is, the actual complaint of unfair labour practice. He submits that the suspension of the union president has created an imbalance between the parties which requires immediate rectification, but without a ruling on the merits of the matter in favour of one or the other party.

[11] Counsel for the union submitted a book of case law and doctrine to show, on the one hand, that freedom of association is fundamental for a union and its members and is guaranteed by the charters of rights. He also submitted a decision by the Board, in *TQS Inc.*, 2008 CIRB 434, to highlight the guiding principles that apply to an application for an interim order. On the same note, counsel submitted the Board's decision in *Trentway-Wagar Inc.*, 2000 CIRB 57, to call attention to the fact that an order under section 19.1 of the *Code* is made to carry out the objectives of the Act, that is, the *Code*. Counsel submits that the Board is the defender of fundamental freedoms including the freedom of expression of the union and its members and the defender of the principles set out in the preamble to the *Code*, and that it is the only one that can intervene to restore the balance lost as a result of the employer's decision to suspend the union president.

B–The Employer

[12] The employer's response, supported by an affidavit, is that there was no justification or urgency for the union president to issue a press release to the media on January 11, 2012. Further, the employer is of the view that it in no way attempted to interfere with union representation but, rather, that it exercised its authority to discipline a union representative, in accordance with applicable law within the meaning of the *Code*.

[13] Counsel for the employer submits that the disciplinary action taken against Mr. Beaudet as union president was not an unfair practice and that there is a limit to what a union representative can say or do. Counsel argued that it is natural to discipline a union representative who goes beyond the bounds of legitimate action, as in this case.

[14] Counsel is of the view that expedited arbitration is the only appropriate forum and submits that the Board should refrain from intervening, given that the issue is the appropriateness of the disciplinary action against Mr. Beaudet. Counsel states that the consequences of this disciplinary action come under the exclusive jurisdiction of a grievance arbitrator, and draws the Board's attention to a provision of the collective agreement (article 8.01) that indicates that discrimination of any kind by the parties, particularly in connection with union business, is prohibited.

[15] Counsel for the employer adds that, contrary to what the union stated in its complaint, there is nothing in the facts of this matter to indicate that there was any anti-union animus on the part of the employer. Counsel adds that past relations between the parties show no legal disputes of any kind and no records contain evidence of any past anti-union conduct on the part of the employer, as suggested by the union. He asks the Board to be cautious and insists that there is no unfair labour practice allegation in the complaint filed by the union that is supported by concrete facts.

[16] Counsel for the employer submits that the union's press release of January 11, 2012, contains untruthful statements and makes accusations against TVA, going so far as to accuse it of racism. Counsel argues that this was a serious misstep on the part of the union president, Mr. Beaudet, and that that very serious act necessitated intervention by the employer.

[17] Counsel for the employer states that the Board must resist the temptation of confounding the consequences of disciplinary action with the cause of such action. At the hearing, counsel filed a document showing that a number of employees had been released from their duties for union business between September 2011 and January 2012 and submitted that it was an exaggeration to say that only Mr. Beaudet could conduct union business, as claimed in Mr. Beaudet's affidavit.

[18] Counsel for the employer also filed a book of Board case law, which includes the decision in *Wardair Canada Inc.* (1988), 76 di 103; and 89 CLLC 16,009 (CLRB no. 722) (*Wardair*) issued by this Board's predecessor, the Canada Labour Relations Board (the CLRB). Counsel points out that, like the matter before the Board, *Wardair* involved a union president who had made incorrect if not outright untruthful public statements, which had led to her suspension by the employer. In a majority decision, the CLRB dismissed the union's unfair labour practice complaints, stating among other things that there had been no anti-union animus on the part of the employer.

[19] Counsel for the employer insists on the fact that the Board should refrain from issuing an interim order, arguing that all internal dispute resolution avenues should be exhausted first. He adds that issues arising from the interpretation of the collective agreement come under the authority of an arbitrator, and that such arbitrator also has the power to issue interim orders. Counsel adds that a union president, which is who is involved in this matter, can be suspended for overstepping the bounds of what is permissible, as in *Wardair*. Counsel adds that, in the case before the Board, the collective agreement contains a clause prohibiting discrimination in connection with union business, contrary to the situation in *Wardair*, where no such clause existed.

[20] Counsel also referred to another decision by the CLRB, in *Maritime Employers' Association* (1985), 63 di 69; and 12 CLRBR (NS) 18 (CLRB no. 540). That case involved an assault by the union president on a representative of the employer. In that instance, the Board ruled that refusing the union president entry to the employer's facilities was warranted given his violent conduct. Counsel for the employer submits that, at no point in that decision did the Board indicate that an employer could intervene only in cases of physical violence. Counsel states that the matter before the Board shows that the union president made a serious misstep and went far beyond the framework

of his immunity, in the form of freedom of speech protection. By contrast, counsel cites a recent decision of the Board, in *Lévesque*, 2011 CIRB 562. In that matter, the Board ruled that the employer had violated the *Code* by preventing the union president from performing union duties and refusing to allow him entry to the employer's facilities when there was nothing to indicate that he had acted inappropriately or unprofessionally.

C–The Union's Reply

[21] Counsel for the union submits that, contrary to what the employer is claiming, the union president never used the word "racism." He also tells the Board that, since the president's suspension, two labour-management meetings have been cancelled because the employer no longer recognizes Mr. Beaudet as union president. He reiterates that the matter before the Board comes under the Board's jurisdiction because there was no violation of the preamble to the *Code*. He submits that the Board is the only body that can determine whether or not the union president can continue to attend to union business and be recognized as union president despite the three-month suspension imposed by the employer.

IV–Analysis and Decision

[22] Section 19.1 of the *Code* provides as follows:

> 19.1 The Board may, on application by a trade union, an employer or an affected employee, make any interim order that the Board considers appropriate for the purpose of ensuring the fulfilment of the objectives of this Part.

[23] As recently ruled by the Board in *Bell Mobility Inc.*, 2009 CIRB 457, given the variety of matters that come before it pursuant to the *Code*, the Board has deliberately refrained from establishing a specific test for the application of section 19.1 of the *Code* and has maintained its discretion to issue an interim order in cases where it deems it appropriate to do so. However, this discretion will be exercised cautiously and sparingly.

[24] It is also important to remember that issuing an interim order in no way prejudges the merits of the underlying application or complaint. Doing so is intended solely to establish the conditions necessary to ensure that the attainment of the objectives of Part I of the *Code* is not compromised while the Board deliberates on the merits of the underlying matter. In other words, interim relief can be provided by the Board to neutralize the potential harm of an **alleged** unfair labour practice pending final determination of a matter, as in the present case.

[25] It is important in this regard to recall the objectives of the *Code*, as the Board did in *Bell Mobility Inc.*, *supra*. The preamble to the *Code* sets out Parliament's commitment to freedom of association and free collective bargaining as the bases of effective labour-management relations. Parliament deems the development of good industrial relations to be in the best interests of Canada in ensuring a just share of the fruits of progress to all. Section 8(1) of the *Code* expressly affirms that every employee is free to join the trade union of his or her choice and to participate in its lawful activities.

[26] The *Code* accordingly sets out a number of unfair labour practices, to ensure compliance with those objectives. The union submits that, in the matter before the Board, the fact that the employer no longer recognizes Mr. Beaudet as union president and refuses to allow him entry to its facilities to conduct union business interferes with the administration of the union and the union's representation of employees and undermines the union's credibility, contrary to section 94(1) of the *Code*. The *Code*'s provisions with regard to unfair labour practices not only protect the freedom to form a shop association, but also confirm the union's role in representing employees in the bargaining unit.

[27] Although the Board does not have to rule on the merits of the main application or presume the outcome of that application filed pursuant to sections 94(1), 94(3), 96 and 97 of the *Code*, the Board must consider the effects of the alleged violations of those provisions of the *Code* as well as the objectives sought by those provisions in order to evaluate to what extent interim relief should be ordered.

[28] While it is true that each case must be considered in light of its peculiar circumstances, even in a case where a union representative had been terminated for resorting to violence and threats of violence during a meeting with an employer representative (*Maritime Employers' Association*, *supra*), the Board stated the following with respect to the employer's decision to refuse to any longer deal with the union leader by phone or in writing:

> The instant case raises a very important question, namely, whether the employer engaged in an unfair labour practice by refusing to deal with a union officer, by refusing to recognize him as a valid union representative and by denying him access to the workplace and to its offices on the ground that he had assaulted and seriously threatened one of its representatives.
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> ...
>
> Be that as it may, it is one thing for an employer to be able to impose disciplinary measures on an employee who carries out union duties and another thing to refuse to deal with him in his capacity as a union officer. **The fact that the first measure is legitimate will not necessarily mean that so is the second, since they are not one and the same and since the issues are vastly different.**
>
> A further dimension: if by doing either of the foregoing, the employer was motivated by anti-union animus, the provisions of the *Code* would then be contravened in both cases, irrespective of just and sufficient cause. However, in the absence of proof of anti-union animus on the employer's part, the legitimacy of the dismissal will be assessed according to the collective agreement, whereas the legitimacy of the refusal to deal with a union representative may be further scrutinized, taking into account other rules such as section 184(1)(*a*) of the *Code* [now paragraph 94(1)(*a*)].
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> (pages 78 and 86; and 28 and 36; emphasis added)

[29] In that matter, the Board ruled that the violence shown and used by the union leader had exceptionally given legitimacy to the employer's action in its own defence, which though compromising the union president's freedom of action, did not violate section 184(1)(*a*) of the *Code* [now section 94(1)(*a*)]. Nevertheless, the Board ruled that, in refusing to recognize Mr. Beaudin as a valid representative and deal with him in a manner other than in person, that is, on the phone or in writing, the employer contravened the provisions of section 184(1)(*a*) of the *Code*. The Board stated the following:

> However, the MEA's attitude is not above reproach. Indeed, the Board cannot be satisfied with the reasons cited by the MEA for refusing to recognize Mr. Beaudin as representative and for refusing to deal with him by mail or by telephone in the performance of his official duties. The MEA's attitude is not justified by the facts that motivated it. Indeed, it could not honestly fear attacks on its physical integrity by speaking with him on the telephone or by acknowledging receipt of a letter that Mr. Beaudin, as president of the union, sent to the MEA. **It was not for the MEA, but strictly for**

the union and its members, to decide whether the conduct of the union's president warranted his being barred from the union. The MEA will have to put an end to this practice.

(pages 92; and 42; emphasis added)

[30] The matter now before the Board does not involve any violence or threats of violence on the part of the union president in the performance of his duties, as was the case in the matter cited above. The issue in this matter is the content of a press release signed by the union president, which according to the employer contained untruthful and slanderous statements about it. The Board is carefully refraining at this stage from characterizing or ruling on the content of the press release and the effects or ramifications they may have had on the employer, as well as on the duty of loyalty or the rights and obligations of the union leaders and members in publicly expressing their views.

[31] Mr. Beaudet's affidavit shows that he has held union positions since 1994 and has been the union president since 2009. The employer has never faulted him with anything or alleged a wrongful act other than in relation to the press release of January 11, 2012, that might lead the Board to deny the union's application for an interim order, which is connected with an unfair labour complaint. In the Board's view, the refusal to recognize Mr. Beaudet as president of the union and allow him entry to the employer's facilities to conduct union business in the context previously described constitutes *prima facie* evidence of interference in the union's affairs such that the Board should intervene.

[32] On this point, the Board notes that, in the letter of suspension sent to Mr. Beaudet on January 30, 2012, the employer specifically indicated that it would no longer recognize him as the union president and asked for him to be replaced, stating the following:

Given that you will not be able to conduct union business with the TVA Group while suspended, we ask that you promptly provide us with the name of the person who will be replacing you as union president during your suspension.

(translation)

[33] The choice of a union's leaders and representatives is of utmost importance and is not a matter within the employer's purview or something in which the employer may be involved or interfere. In *Canadian Pacific Air Lines Limited* (1985), 61 di 140; and 10 CLRBR (NS) 62 (CLRB no. 520), the CLRB stated the following regarding section 184(1)(*a*) of the *Code* (now section 94):

> ... The provision is also directed at leaving the union free to operate and to do its job on behalf of the persons it represents without improper meddling by the employer in matters that are primarily the concern of the union, meddling that would have the effect of undercutting or weakening the union.
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> (pages 155; and 77)

V–Conclusion

[34] After considering all the evidence in relation to the application for an interim order, and in light of the objectives of the *Code* and the alleged violations thereof, the Board finds that it must intervene in this matter on an interim basis. In the Board's view, unless the Board intervenes quickly, the union may find itself on an uneven playing field while awaiting a hearing and a decision on the merits of the case. An interim order is therefore required to ensure the fulfilment of the objectives of the *Code*.

[35] The Board notes that, on January 31, 2012, that is, the same day that the unfair labour practice complaint was filed, Mr. Beaudet filed a grievance seeking to have his suspension cancelled and obtain restitution for all rights and advantages provided for under the collective agreement. The Board is of the view that, given the provisions of the collective agreement governing the parties and, in particular, the wording of section 8.01 and the fact that, within the context of the hearing of February 15, 2012, both parties agreed to arbitration in relation to the merits of the suspension given to Mr. Beaudet, the complaint in file no. 29245-C may in fact be decided by an arbitrator. Section 98(3) of the *Code* provides that the Board may refuse to determine any unfair labour practice complaint if, in the Board's opinion, the matter could be referred by the complainant to arbitration pursuant to a collective agreement. The Board accordingly allows the employer's request that the matter on the merits be referred to expedited grievance arbitration and that it refuse to decide the complaint in file no. 29245-C.

[36] The parties will find attached the order giving effect to the decision set out above respecting the application for an interim order pursuant to section 19.1 of the *Code* (file no. 29244-C). The order will remain in force until Mr. Beaudet's suspension ends or the Board amends, alters or varies the order pursuant to section 18 of the *Code*, if appropriate. The Board retains jurisdiction to deal with any issues arising from the implementation or effect of this order.

[37] This is a unanimous decision of the Board.

Louise Fecteau
Vice-Chairperson

Daniel Charbonneau
Member

André Lecavalier
Member

Order No. 667-NB

IN THE MATTER OF THE

Canada Labour Code

- and -

Syndicat des employé(e)s de TVA,
Local 687, CUPE;
Réjean Beaudet,

applicants,

- and -

TVA Group Inc.,

respondent.

WHEREAS on January 31, 2012, the Canada Industrial Relations Board (the Board) received an application from the applicants for an interim order pursuant to section 19.1 of the *Canada Labour Code (Part I–Industrial Relations)* (the *Code*) (file no. 29244-C) in connection with a complaint of unfair labour practice filed pursuant to sections 94(1)(*a*), 94(3)(*a*)(i) and (*e*), 96 and 97 of the *Code* (file no. 29245-C);

AND WHEREAS the application for an interim order was filed by the applicants following the employer's decision of January 30, 2012, to suspend Mr. Réjean Beaudet, a TVA employee, for a period of three months, preventing him from conducting union business with the TVA Group during that period and preventing him from entering the TVA Group's facilities;

AND WHEREAS the union deems it imperative that the Board intervene on an emergency basis to issue an interim order to have the employer recognize Mr. Beaudet as a union representative and allow him entry to the TVA's facilities so that he may fulfill his obligations;

AND WHEREAS the Board held a hearing on February 15, 2012, regarding the application for an interim order and heard the arguments of the parties in support of their respective written submissions;

AND WHEREAS, after considering all the evidence in relation to the application for an interim order, and in light of the objectives of the *Code* and the violations thereof alleged in the unfair labour practice complaint filed by the union, the Board finds that it must intervene in this matter on an interim basis to reestablish the balance between the parties and ensure the fulfilment of the objectives of the *Code*.

NOW, THEREFORE, the Board hereby orders the TVA Group Inc., pursuant to section 19.1 of the Code:

1) to recognize Mr. Réjean Beaudet on an interim basis as a union representative and, more specifically, union president;

2) to allow Mr. Réjean Beaudet entry, on an interim basis, to the TVA Group Inc.'s facilities, so that he may attend to business in his capacity as union president.

THIS ORDER will remain in force until Mr. Réjean Beaudet's suspension ends or until the Board amends, alters or varies the order pursuant to section 18 of the *Code*, if appropriate.

THE BOARD RETAINS JURISDICTION to deal with any issues arising from the implementation or effect of this Order.

ISSUED at Ottawa, this 17th day of February, 2012, by the Canada Industrial Relations Board.

Louise Fecteau
Vice-Chairperson

File Nos. 29244-C and 29245-C